



**ITALIAN REPUBLIC
IN THE NAME OF THE ITALIAN
PEOPLE**

ORDINARY COURT OF CAMPOBASSO

**Specialized Section for Immigration, International Protection, and Free
Movement of European Union Citizens**

The Court, in the person of Judge Dr. Claudia Carissimi, has issued the following

JUDGMENT

in the civil case of first instance, registered under general docket no. [REDACTED]
filed pursuant to Article 281-decies of the Italian Code of Civil Procedure, by:

[REDACTED] (Tax Code [REDACTED]) born in [REDACTED]
[REDACTED] (USA) on [REDACTED];

[REDACTED] (Tax Code [REDACTED]), born in [REDACTED] (USA)
on [REDACTED], his own right and as the legal guardian of his minor children
[REDACTED] (Tax Code [REDACTED]), born in [REDACTED] (USA)
on [REDACTED] e [REDACTED] (Tax Code [REDACTED]), born in
[REDACTED] (USA) on [REDACTED]; [REDACTED] (Tax Code
[REDACTED]), born in [REDACTED] (USA) on [REDACTED];

all represented and defended by Attorney Salvatore Aprigliano, as per power of
attorney on file, with elected domicile at his office in Milan, Via Fabio Filzi no.
41;

Petitioners

versus

MINISTRY OF THE INTERIOR (Tax Code 97149560589), in the person of the
Minister pro tempore, represented and defended by law by the District Attorney
General's Office of Campobasso, where it is domiciled;

Respondent

and with the intervention of the Public Prosecutor at the Court of Campobasso

Intervenor ex lege

Subject: Petition for recognition of Italian citizenship

Conclusions: The parties concluded as set out in the records.

Concise statement of the factual and legal grounds for the decision

The petitioners request recognition of their status as Italian citizens by virtue of their common descent from [REDACTED], an Italian citizen born in [REDACTED] ([REDACTED]) on [REDACTED], who later emigrated to the United States of America, and request that legal costs be awarded in their favor.

The Ministry of the Interior appeared in court and requested: Primarily, that the petition be declared inadmissible due to lack of standing or, in any event, that it be dismissed on the merits as unfounded; Alternatively, the suspension of the proceedings pursuant to Article 295 of the Italian Code of Civil Procedure, or a suitable postponement, pending the outcome of the constitutional legitimacy challenge to Article 1 of Law no. 91/1992 referred to the Constitutional Court by the Tribunal of Bologna with an order dated 26.11.2024.

On the merits, the Ministry argued: Lack of legal standing of the petitioners, in view of the required incidental ascertainment of the citizenship status of their deceased ancestors, and the alleged impossibility for descendants to bring action for such ascertainment; Lack of interest to bring the action, particularly with reference to the male line, due to the absence of proof that the petitioners initiated administrative proceedings or waited for the 730-day deadline to expire; Regarding the female line, the Ministry claimed the non-retroactivity of the constitutional court rulings and the extinguishment of the legal situation that would constitute grounds for recognition of Italian citizenship; Lack of proof of the line of descent, the retention of Italian citizenship by the ancestors, and the transferability of such status to the petitioners; Introduction of new citizenship rules under Decree Law no. 36 of March 28, 2025; The need to suspend proceedings due to a prejudicial issue pursuant to Article 295 of the Code of Civil Procedure, pending resolution of the constitutional legitimacy matter.

The case was conducted via documentary evidence and discussed at the hearing held on April 22, 2025, in written form, following the authorized submission of written notes in which the parties reiterated the conclusions previously submitted in their respective pleadings and requested full acceptance of their claims.

The claim is well-founded and must be upheld.

1) On the standing to sue

The objection raised by the Ministry regarding the lack of standing to sue on the part of the petitioners is unfounded and must be rejected. In this regard, it is sufficient to note the following:

- Each petitioner is acting in their own right to assert their right to the recognition of Italian citizenship *jure sanguinis*;
- No ruling is required regarding the citizenship of the ancestors, at least those who are necessarily deceased;
- Denying the recognition of citizenship based on the legislation in force at the time the application was submitted would lead to an inadmissible *interpretatio abrogans* of said legislation;
- “The status of citizen, once acquired, is permanent and imprescriptible.” [...] “It can only be lost by renunciation. It follows that, where citizenship is claimed by a descendant, they are required—under unchanged legislation—to prove nothing more than this: to be a descendant of an Italian citizen; whereas it is up to the opposing party, if raising such an objection, to prove the event interrupting the transmission line” (Cass. civ. 354/2022)
- “As a result of Constitutional Court rulings no. 87 of 1975 and no. 30 of 1983, the right to Italian citizenship status must be recognized to applicants born abroad to the child of an Italian woman who married a foreign citizen during the validity of Law no. 555 of 1912 and who, as a result, lost her Italian citizenship due to the marriage. While upholding the principle of supervening unconstitutionality—according to which the declaration of unconstitutionality of pre-constitutional norms only produces effects on relationships and situations not yet concluded as of January 1, 1948, and cannot retroact further than the Constitution’s entry into force—the Court affirms that the right to citizenship, as a permanent and imprescriptible status (except in the case of renunciation by the petitioner), is justiciable at any time (even in case of prior death of the ancestor or parent from whom recognition derives), due to the unlawful deprivation resulting from the unconstitutional discriminatory provision, which persisted even after the Constitution entered into force” (Cass. United Sections judgment no. 4466 of 25/02/2009). And further: “the status of citizen is permanent and has enduring effects that manifest in the exercise of related rights; it, as noted, can only be lost by



renunciation, even under previous legislation (Art. 8 no. 2 of Law 555 of 1912) [...] Therefore, it is rightly stated that the status of citizen, as an effect of the condition of being a child, constitutes an essential quality of the person, with characteristics of absoluteness, originarity, unavailability and imprescriptibility, which make it justiciable at any time and, as a rule, not definable as exhausted or closed unless denied or recognized by a final judgment.”.

2) On the failure to initiate the administrative procedure

The objection raised by the defendant is unfounded and must be rejected: the failure to let the 730-day term provided by Article 3 of Presidential Decree no. 362/1994 elapse—within which the Public Administration may decide—is irrelevant, since, in the absence of an express legislative provision, it cannot be deemed that the expiry of such term constitutes a condition of inadmissibility. This is because procedural sanctions—and especially those restricting the constitutionally protected right of action (Art. 24 of the Constitution)—cannot be applied by analogy. In other words, it is not possible to establish grounds for inadmissibility or unprocedibility through case law that are not expressly provided by law. Furthermore, *“as a general rule, the case law has excluded that the filing of an administrative application constitutes a condition for the admissibility of a judicial claim, since, in matters of determining the subjective right to citizenship, the system operates under a dual track”* (cf. Cass. United Sections, Judgment no. 28873 of 2008) (Tribunal of Florence, 17.01.2023). Moreover, *“the right to citizenship [...] is immediately and unconditionally enforceable, independently of any administrative procedure,”* since *“neither Law no. 91/1992, nor the implementing decrees, provide any obligation to file a prior administrative application for the recognition of citizenship by operation of law”* (Tribunal of Genoa, judgment no. 802/2025). It has therefore been ruled out that such an application constitutes a condition for the admissibility of a judicial claim, with express reference made to the principle of the “dual track,” according to which *“the absence of administrative certification cannot preclude the judicial proceeding for the recognition of the perfect subjective right”* (Cass. Civ. United Sections 28873/2008).

3) On the non-retroactivity of Constitutional Court rulings

On this point, it will suffice to fully refer to the legitimacy rulings mentioned in the last two points of paragraph 1), in order to further clarify—if necessary—that the recognition of Italian citizenship *iure sanguinis*, where generational transmissions occurred through the maternal line before the entry into force of the Constitution, does not require the retroactive application of Constitutional Court rulings to a date prior to 1948, as the right to citizenship is a permanent and imprescriptible status.

In any case, the objection proves entirely irrelevant, since in the present case the line of descent is male (in other words, there are no maternal transmissions predating the entry into force of the Constitution).

4) On the non-retroactivity of Decree Law 36/2025

The application in the heading was filed before the entry into force of Decree Law 36/2025 (*Urgent provisions on citizenship*), which, under Article 1, letter b), expressly provides that: “the status of citizen of the applicant shall be judicially ascertained, in accordance with the legislation applicable as of March 27, 2025, following a judicial application submitted no later than 11:59 p.m., Rome time, on the same date.”

It clearly follows that the subsequent legislation invoked by the respondent does not apply to the present case, not only due to what is explicitly stated therein, as cited above, but also in light of the general principle of the non-retroactivity of laws, which “shall apply only for the future” (Article 11 of the Preliminary Provisions to the Civil Code).

Having clarified that the new rules will apply only to applications for citizenship filed after its entry into force, it is noted, on the one hand, that no retroactive effect is expressly provided by Decree Law 36/2025 (which, moreover, must still be converted into law, such that its text may still be amended), and, on the other hand, that it would be entirely unreasonable to interpret and decide cases governed by the prior legislation in light of the new provisions.

5) On the lack of evidence: vagueness of the objection

Equally unfounded is the objection concerning the alleged lack of evidence supporting the facts underlying the application.

According to well-established case law, *“within the system established by the Civil Code of 1865, the subsequent Citizenship Law No. 555 of 1912, and the current Law No. 91 of 1992, citizenship by birth is acquired originally iure sanguinis, and once acquired, the status of citizen is permanent, imprescriptible, and justiciable at any time on the basis of simple proof of the acquisition event, consisting in birth to an Italian citizen; those requesting recognition of citizenship are required to prove only the acquisition event and the transmission line, while it is up to the opposing party, if making an exception, to prove any interrupting circumstance”* (Italian Supreme Court, Joint Sections, rulings no. 25317/2022 and no. 25318/2022): **In the present case, the documentation submitted in support of the application is complete and exhaustive, and the respondent has failed to provide the necessary counter-evidence.**

6) On the question of constitutional legitimacy and the request for suspension pursuant to Article 295 of the Code of Civil Procedure

Firstly, it must be noted that the request for suspension under Article 295 of the Code of Civil Procedure cannot be granted, as the type of suspension invoked is not contemplated by the legal system. The defendant did not raise the question of constitutional legitimacy—had it done so, the judge would have had the option either to refer the matter to the Constitutional Court (if deemed relevant and not manifestly unfounded) or to proceed with a decision on the merits. In fact, a suspension under Article 295 c.p.c. would represent a *“decision inconsistent with the structure of the incident of constitutional legitimacy,”* as there is no discretionary power for the judge to suspend proceedings outside the strictly defined cases of mandatory suspension, nor for mere reasons of opportunity. The Constitutional Court has strongly criticized the practice of so-called *“improper suspension,”* which refers to suspending proceedings—without a formal referral order to the Court—in anticipation of a decision on a similar issue raised by another judge. This practice, the Court notes, deprives the parties of the opportunity to access the constitutional judgment and limits the range of perspectives presented before the Court, thereby distorting the incidental structure of the constitutional legitimacy review (see Constitutional Court ruling no. 218/2021, legal reasoning no. 2).

Consistent with this, lower court rulings, such as the order of the Court of Turin rendered in open court on 16 January 2025, affirm:

“The suspension of proceedings due to a pending constitutional legitimacy review on the applicable legal provisions, when raised by another judge, as a discretionary ‘ope iudicis’ suspension outside the expressly mandated legal cases, is not permissible under the current legal framework. If allowed, such discretion would clash irreconcilably with both the principle of equality (Article 3 of the Constitution) and the right to judicial protection (Article 24 of the Constitution), as well as with the principle of reasonable duration of proceedings, which the law must guarantee under Article 111 of the Constitution.”

As a result, a discretionary suspension under Article 295 c.p.c. is not allowed, and any such order would be appealable under Article 42 of the Code of Civil Procedure (see Italian Supreme Court, ruling no. 6121/2024).

The judge therefore finds that there is no room for the requested suspension based on the alleged prejudicial relevance, due to the manifest lack of merit in the constitutional issue.

The Ministry of the Interior, essentially referring to Order no. 247/2024 by which the Court of Bologna raised the question of the constitutional legitimacy of Article 1 of Law no. 91 of 5 February 1992 — which provides that *“a person is a citizen by birth if they are the child of a father or a mother who are citizens,”* without setting any limits to the recognition of Italian citizenship by descent — in reference to Articles 1, 3, and 117 of the Constitution (the latter in relation to international obligations and Articles 9 of the Treaty on European Union and 20 of the Treaty on the Functioning of the European Union), requested the suspension of the proceedings and, alternatively, a reasonable postponement in order to await the ruling of the Constitutional Court.

However, the issue, as raised by the defendant administration, while certainly relevant — since it concerns the legislation applicable to the decision of the present case — proves to be manifestly unfounded, for the following reasons:



- 1) according to established case law, *“it is for each State to determine the conditions that a person must meet to be considered as having its citizenship. This is subject only to the negative limitation of the existence of a genuine link between the State and the individual concerned. It is up to national legislation to define what constitutes such a link (...) the bond of citizenship can never be based on a fictio (...) and certainly a blood relationship is not a fictio”* (Italian Supreme Court, Joined Chambers, no. 25317/2022);
- 2) citizenship falls within the exclusive competence of the Member States; indeed, under Article 117, paragraph one, letter i), *“the State has exclusive legislative power in the following matters: (...) i) citizenship, civil status and registries”*;
- 3) the absence of a limit on the recognition of citizenship by descent — that is, through bloodline — constitutes an exercise of legislative authority and thus rightfully falls within the discretion of the legislature. Therefore, the imposition of a two-generation limit would amount to an additive intervention, which is not permitted to the judiciary;
- 4) the reference to the different status of foreign nationals born in Italy, who are subject to a specific administrative procedure to obtain Italian citizenship, since the so-called *ius soli* is not provided for in the legal system, likewise falls under legislative discretion and must be assessed accordingly;
- 5) ultimately, it is the Italian legislator, in exercising its discretionary power, that has defined the conditions to be met for citizenship recognition, having chosen a connection criterion — the bloodline — which cannot be deemed ineffective, as highlighted by the aforementioned Supreme Court ruling (Joined Chambers);
- 6) finally, Article 28 of Law no. 87 of 11 March 1953 provides that *“The Constitutional Court’s review of the legitimacy of a law or act having the force of law excludes any political evaluation and any review of Parliament’s exercise of discretionary power,”* meaning that the constitutional legitimacy question already raised is arguably inadmissible, as it entails a political evaluation and oversight of Parliament’s discretionary power, which are explicitly excluded from the scope of review entrusted to the Constitutional Court.

This represents the prevailing approach of the Specialized Section mentioned in the heading, as also published on the official website of the Court of Campobasso.

In conclusion, the matter under consideration is clearly unfounded and must be rejected, and the dispute must therefore be resolved on the merits.

7) On the Merits

The applicants request that their status as Italian citizens be recognized by virtue of their common descent from [REDACTED], an Italian citizen born in [REDACTED] ([REDACTED]) on [REDACTED], who later emigrated to the United States of America, with an award of legal costs.

The claim is well-founded and must be upheld.

The line of descent from the Italian ancestor to the current applicants is fully documented.

The applicants have fulfilled their burden of proof by submitting, respectively, the birth and marriage certificate of Mr. [REDACTED], along with the further birth and marriage certificates of his descendants, up to the current applicants. The respondent failed to meet its burden of proof by not submitting any documentation proving that the Italian citizen ancestor had renounced his citizenship—limiting itself instead to vague and unsubstantiated claims.

The applicants also submitted evidence of their attempts to submit applications for the recognition of Italian citizenship to the Consulate General of Italy in Chicago (USA) and to the First-Class Consulate of Italy in Detroit (USA)—territorially competent for their respective residences—via the online procedure, from which it is clear that the applicants were unable to secure an appointment with the consular authorities.

In particular, the applicants submitted replies from the consulates stating that the Consulate General of Italy in Chicago is currently processing citizenship applications submitted in summer 2022, while the First-Class Consulate of Italy in Detroit confirmed that the booking system is fully booked until September 2026.

From the examination of the submitted documentation, it appears that there are no instances of interruption in the transmission of citizenship through the maternal line prior to the entry into force of the Italian Constitution.

Therefore, no legal obstacle prevented the transmission of Italian citizenship under the legislation in force at the time when the individual descendants were born; in other words, the transmission occurred independently of the later developments in constitutional and Supreme Court jurisprudence, which ultimately abolished the limitations on citizenship transmission through the maternal line and reaffirmed that the system—thus aligned with constitutional values—must also be considered applicable to descendants born before the Italian Constitution came into force.

In principle, then, the request—if properly supported—should be favorably resolved through administrative channels without the need for judicial intervention. In this regard, it should be noted that, under Article 2 of Law no. 241 of August 7, 1990, State Administrations are required to conclude procedures within clearly defined and certain timeframes.

However, the applicants have provided evidence of attempts to submit applications for recognition of Italian citizenship via the online portals of the Consulate General of Italy in Chicago (USA) and the First-Class Consulate of Italy in Detroit (USA)—which are territorially competent for their respective residences—demonstrating their inability to obtain an appointment or favorable outcome within a reasonable time. These circumstances have therefore justified resorting to judicial proceedings.

8) On legal costs

Legal costs shall follow the outcome of the case (also considering the following multiple factors: the generic nature of the Ministry's defenses; the assertion of clearly irrelevant arguments in relation to the line of descent applicable in the present case; the request for suspension due to a supposed prejudicial question, despite the fact that the position of the Specialized Section for International Protection of this very Court had already been published on the Tribunal's official website). Costs are awarded as specified in the ruling, pursuant to Ministerial Decree 147/2022, applying the minimum amounts for proceedings before the Court of First Instance of indeterminable value and low complexity, and recognizing only the preliminary and introductory phases.



FOR THESE REASONS

The Court, definitively ruling,

- Declares that the petitioners are Italian citizens;
- Orders the Ministry of the Interior, and through it the competent civil registrar, to proceed with the registrations, transcriptions, and annotations required by law in the civil status registers regarding the citizenship of the individuals indicated, and to make any necessary communications to the competent consular authorities;
- Condemns the defendant to reimburse the petitioners for legal costs, which are set at a total of € [REDACTED], plus documented out-of-pocket expenses (unified court fee and stamp duty), to be assigned to the petitioners' counsel if declared as acting without advance payment.

Thus decided in Campobasso, 5 May 2025.

Judge
Dott.ssa Claudia Carissimi

